

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
)
Frederic FORTIN et al.) Group Art Unit: 3733
)
Application No.: 10/524,174) Examiner: Fisher, Elana Beth
)
Filed: March 3, 2006)
) Confirmation No.: 2469
For: DISTRACTION AND DAMPING)
SYSTEM WHICH CAN BE)
ADJUSTED AS THE VERTICAL)
COLUMN GROWS)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

INFORMATION DISCLOSURE STATEMENT UNDER 37 C.F.R. § 1.97(c)

Pursuant to 37 C.F.R. §§ 1.56 and 1.97(c), Applicant brings to the attention of the Examiner the documents on the attached listing. This Information Disclosure Statement is being filed after the events recited in Section 1.97(b) but, to the undersigned's knowledge, before the mailing date of either a Final action, Quayle action, or a Notice of Allowance. Under the provisions of 37 C.F.R. § 1.97(c), this Information Disclosure Statement is accompanied by a fee of \$180.00 as specified by Section 1.17(p).

Copies of the listed non-patent literature documents are attached.

Applicant respectfully requests that the Examiner consider the listed documents and indicate that they were considered by making appropriate notations on the attached form.

The United States Court of Appeals for the Federal Circuit held in *Dayco Products, Inc. v. Total Containment, Inc.*, 329 F.3d 1358, 66 U.S.P.Q.2d 1801 (Fed. Cir. 2003) that an "adverse decision" by another examiner may meet the materiality standard under the amended Rule 56, and thus, Applicants should disclose prior rejections of "substantially similar claim[s]" to the Office. Accordingly, although Applicants are not representing that the Office Actions in the co-pending application are material to the present application and are not admitting that any of the other claims are substantially similar, out of an abundance of caution, Applicants have listed the Office Action in co-pending Application No. 10/505,469 on the attached PTO/SB/08 and a copy is attached.

Additionally, although Applicants are not admitting that any of the claims in the co-pending Application are similar, out of an abundance of caution, Applicants have listed the Notice of Allowance issued in co-pending Application No. 10/760,075 and a copy is attached.

This submission does not represent that a search has been made or that no better art exists and does not constitute an admission that each or all of the listed documents are material or constitute "prior art." If the Examiner applies any of the documents as prior art against any claims in the application and Applicant determines that the cited documents do not constitute "prior art" under United States law, applicant reserves the right to present to the office the relevant facts and law regarding the appropriate status of such documents.


Applicant further reserves the right to take appropriate action to establish the patentability of the disclosed invention over the listed documents, should one or more of the documents be applied against the claims of the present application.

If there is any fee due in connection with the filing of this Statement, please charge the fee to Deposit Account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: February 3, 2010

By: 
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